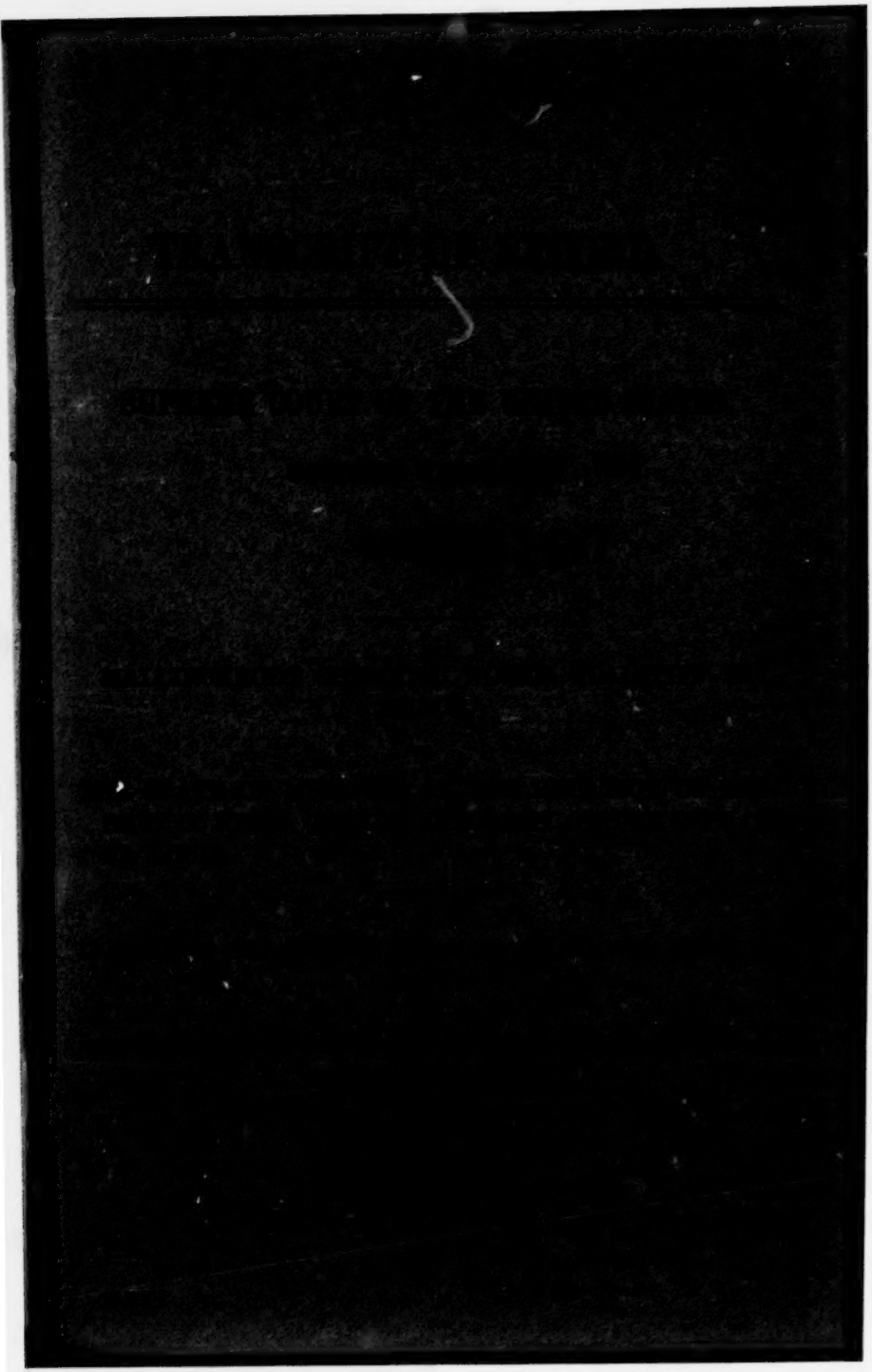

(23,728)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1913.

## No. 580.

MALLINCKRODT CHEMICAL WORKS, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF MISSOURI AT THE RELATION OF SEEBERT G. JONES, CIRCUIT ATTORNEY OF THE CITY OF ST. LOUIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 12, 1913.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the Judgment of a plea, which is in the said Supreme Court, before you, at the April Term, 1913, between State of Missouri, at the relation of Seebert G. Jones, Circuit Attorney of the City of St. Louis, Respondent, and Mallinckrodt Chemical Works, Appellant, a manifest error hath happened to the great damage of the said Appellant, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if Judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 12th day of June, next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 13th day of May, in the year of our Lord One Thousand Nine Hundred and Thirteen.

Issued at office in the City of Jefferson, with the seal of the District Court of the United States for the Western District of Missouri, Central Division, dated as aforesaid.

[Seal of the United States District Court, Western District of Missouri, Central Division.]

JOHN B. WARNER,
*Clerk United States District Court, Western District of Missouri, Central Division,*
By H. C. GEISBERG, *Deputy.*

Allowed by
HENRY LAMAR,
*Chief Justice of the Supreme Court of Missouri.*

[Endorsed:] Filed May 13/13. J. D. Allen, Clerk.

2 Which said Citation is in words and figures as follows, to-wit:

The United States of America to the State of Missouri at the relation of Seebert G. Jones, Circuit Attorney, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty

days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of Missouri, wherein Mallinckrodt Chemical Works is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Henry Lamar Chief Justice of the Supreme Court of Missouri, this 13th day of May in the year of our Lord one thousand nine hundred and thirteen.

HENRY LAMAR,
*Chief Justice of the Supreme Court of Missouri.*

[Seal of the Supreme Court of Missouri.]

Attest the seal of said Court.
J. D. ALLEN,
*Clerk of the Supreme Court of Missouri.*

*Acceptance of Citation.*

The undersigned, as counsel for defendant in error, hereby accept copy & service of the foregoing citation, upon the date of issue of same.

JOHN T. BARKER, *Att'y General,*
*Of Counsel for Defendant in Error.*

[Endorsed:] No. —. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. —— —— vs. —— ——. Citation. Filed May 13, 1913. J. D. Allen, Clerk.

3 In the Supreme Court of Missouri, April Term, 1913. Court in Banc.

STATE OF MISSOURI, *set:*

Be it remembered that heretofore, to-wit on the 6th day of January, 1912, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri, a certified copy of the judgment and order granting appeal in a certain cause wherein State ex rel. Seebert G. Jones, Circuit Attorney of the City of St. Louis, was the Respondent and the Mallinckrodt Chemical Works, a corporation was the Appellant, which said certified copy of the judgment and order granting appeal is in words and figures as follows, to-wit:

4 STATE OF MISSOURI,
*City of St. Louis, ss:*

Be it remembered, that heretofore to-wit: at the October Term, Nineteen Hundred and Eleven, of the Circuit Court, City of St. Louis, within and for the City and State aforesaid, and on the thirteenth day of October, 1911, it being the twenty-fifth day of the said October

Term, 1911, of said Court, the following proceedings were had in cause No. 67352, Series A, of the causes in said Court, wherein the State of Missouri, at the relation of Seebert G. Jones, Circuit Attorney of the City of St. Louis, is Relator and Mallinckrodt Chemical Works, a corporation, is Respondent, to-wit:

MONDAY, *October 30th*, 1911.

67352. A.

THE STATE OF MISSOURI at the Relation of SEEBERT JONES, Circuit Attorney of the City of St. Louis,
vs.
MALLINCKRODT CHEMICAL WORKS, a Corporation.

This cause having heretofore, and on the 2nd day of May, 1911, been tried, and submitted to the Court upon the pleadings and the evidence and proof adduced and taken under advisement; and the Court now being sufficiently advised of and concerning the
5 premises, doth find in favor of the plaintiff relator on the issues joined and doth find that the allegations of the petition herein are true and that relator is entitled to judgment as prayed for in said petition; wherefore, it is ordered and adjudged by the Court that the Corporate Charter of the respondent, the Mallinckrodt Chemical Works and its certificate of incorporation, and its right and franchise to do business in this State, be, and the same are hereby declared forfeited, void and of no effect; that the respondent pay the costs of this proceeding and that execution issue therefor. It is further ordered by the Court that a copy of this judgment be certified to the Secretary of State of the State of Missouri. Instructions filed.

And at the said October Term, 1911, of said Court, the following further proceedings were had in said cause, to-wit:

WEDNESDAY, *November 29th*, 1911

67352. A.

THE STATE OF MISSOURI at the Relation of SEEBERT G. JONES, Circuit Attorney of the City of St. Louis,
vs.
MALLINCKRODT CHEMICAL WORKS, a Corporation.

6 Now at this day comes the respondent by attorney and upon its motion and for good cause shown, it is ordered by the Court that said respondent have 60 days' addition- time within which to file its bill of exceptions herein and 10 days after the expiration of the present term of this Court to file an appeal bond in the sum of Five hundred and no/100 ($500.00) dollars with security to be approved by the Court or the Judge or Clerk thereof in vacation; thereupon said respondent deposits the docket fee for

appeal required by law and files an application, verified by affidavit, for an appeal, and the Court having seen and examined said application, doth grant the same and doth order that an appeal be and is hereby allowed said respondent to the Supreme Court of the State of Missouri; from the judgment and decision of the Court heretofore rendered herein.

7 STATE OF MISSOURI,
*City of St. Louis, ss:*

I, Chas. R. Graves, Clerk of the Circuit Court, City of St. Louis, within and for the City and State aforesaid, do hereby certify, that the above and foregoing, contains a full, true and complete transcript of the judgment in the above entitled cause, showing the term and day of the term, month and year in which the same was rendered, and also, of the order granting an appeal in said cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this 14th day of December, 1911.

[SEAL.] CHAS. R. GRAVES,
*Clerk Circuit Court.*

And thereafter, to-wit, on the 13th day of April 1912, the court made and entered of record the following, to-wit:

In the Supreme Court of Missouri, October Term, 1912. Court in Banc.

STATE OF MISSOURI at the Relation of SEEBERT G. JONES, Circuit Attorney of the City of St. Louis, Respondent,
vs.
MALLINCKRODT CHEMICAL WORKS, a Corporation, Appellant.

8 Comes now the respondent, by attorney, and files his motion to advance the cause herein.

Which said motion is in words and figures, as follows, to-wit:

9 In the Supreme Court of the State of Missouri, April Term, 1912.

STATE OF MISSOURI at the Relation of SEEBERT G. JONES, Circuit Attorney of the City of St. Louis, Respondent,
vs.
MALLINCKRODT CHEMICAL WORKS, a Corporation, Appellant.

Now comes Elliott W. Major, Attorney General of the State of Missouri, who, for and on behalf of the Respondent in the above entitled cause, represents to the Court that this is a proceeding which originated in the Circuit Court of the City of St. Louis under Section 10322 of the Revised Statutes of Missouri of 1909, in rela-

tion to Pools, Trusts and Conspiracies, on a petition filed in said Circuit Court by the Circuit Attorney of said City charging said Appellant Corporation with failure to comply with the requirement of said Section, and that from the judgment of said Circuit Court against said corporation forfeiting its corporate charter the appeal herein was taken; that the questions involved in this suit include the sufficiency, validity and constitutionality of said Section 10322 of the Statutes and the legal capacity of the plaintiff (Respondent) to sue, which questions have never been adjudicated by the Supreme Court of this State; that many cases arise under said Section 10322 each year throughout the State; that during the last three years the Circuit Attorney of the City of St. Louis has brought in the Circuit Court of said City more than twenty-eight hundred (2800) suits against corporations of said City to enforce the provisions of said Section 10322, more than eight hundred (800) of which are now pending, only a small proportion thereof, however, being as yet actively contested; that the case at bar is the first case brought under said Section 10322 to reach the Supreme Court; that as to the validity of said Section 10322 there is uncertainty and doubt in the minds of many lawyers and citizens of this State; that a decision by this Court of the questions involved in this case would have a decisive and controlling effect upon much litigation now pending and about to arise in this State; and that an early decision of the said questions by this Court would greatly diminish litigation, lessen the burdens of the State, and promote the general welfare.

Wherefore, the Attorney General, for the Respondent, moves the Court to advance this case on the docket and to set same for hearing on some special day at this Term convenient to the Court, or for such other time as the Court may think proper.

ELLIOTT W. MAJOR,
*Attorney General of Missouri.*

FORREST G. FERRIS,
*Of Counsel.*

And thereafter, to-wit on the 7th day of May 1912, the court made and entered of record the following, to-wit:

In the Supreme Court of Missouri, Court in Banc, May 7th, 1912.

STATE ex Rel. SEEBERT G. JONES, Circuit Attorney of the City of St. Louis, Respondent,

vs.

MALLINCKRODT CHEMICAL WORKS, a Corporation, Appellant.

Now at this day, the court having seen and fully understood the respondent's motion to advance this cause on the docket, doth order that said motion be sustained and that cause be set for argument in Division No. 1 October Term, 1912.

And thereafter, to-wit on the 19th day of July 1912, the said Appellant filed its printed abstract of the record, which said abstract is in words and figures as follows, to-wit:

11 In the Supreme Court of Missouri, Division No. 1, October Term, 1912.

STATE OF MISSOURI at the Relation of SEEBERT G. JONES, Circuit Attorney of the City of St. Louis, Respondent,
vs.
MALLINCKRODT CHEMICAL WORKS, Appellant.

Appeal from a Judgment of Forfeiture of Charter.

Appeal from the Circuit Court, City of St. Louis, Hon. James E. Withrow, Judge.

*Appellant's Abstract in Lieu of Full Transcript.*

Be it Remembered, That on the 14th day of September, 1910, there was filed in the office of the Circuit Clerk the following

12 *Petition.*

STATE OF MISSOURI,
*City of St. Louis, ss:*

In the Circuit Court of the City of St. Louis, October Term, 1910.

THE STATE OF MISSOURI at the Relation of SEEBERT G. JONES, Circuit Attorney of the City of St. Louis, Relator.
vs.
MALLINCKRODT CHEMICAL WORKS, a Corporation, Respondent.

Comes now Seebert G. Jones, Circuit Attorney within and for the City of St. Louis in the State of Missouri, and states that the respondent is, and at all times hereinafter mentioned was, a corporation duly organized, incorporated and existing, under and by virtue of the laws of Missouri, located and transacting and conducting business in the City of St. Louis and State of Missouri, and as such corporation, respondent is amenable to the provisions of Chapter 98 of the Revised Statutes of Missouri of 1909, entitled "Pools, Trusts, Conspiracies and Discriminations."

Relator states that on or about the first day of July, A. D. 1910, the Secretary of State of State of Missouri, in obedience to the requirements of Section 10322 of said Revised Statutes, duly addressed and mailed to the President of Mallinckrodt Chemical Works, 3600 North Second street, St. Louis, Missouri, the respondent incorporated company, a letter of inquiry as to whether the said respondent corporation had all or any of its business or interest in or with any trust, combination or association of persons or stockholders, as

named in the provisions of Article 1 of said Chapter 98 of said Revised Statutes, and requiring an answer, under oath, of the president, secretary, or managing officer of said respondent company, and said Secretary of State duly enclosed in said letter of
13 inquiry a form of affidavit, being the same form required by the laws of the State of Missouri and prescribed and set forth in said Section 10322 of said Revised Statutes and being in words and figures as follows:

*Affidavit.*

STATE OF MISSOURI,
*County of* ——, *ss:*

I, —— ——, do solemnly swear that I am the — (President, Secretary or Managing Officer) of the corporation known and styled —— duly incorporated under the laws of — on the —— day of ——, 19—, and now transacting or conducting business in the State of Missouri, and that I am duly authorized to represent said corporation in the making of this affidavit. And I do further swear that the said —— —— known and styled as aforesaid, is not now, and has not at any time within one year from the date of this affidavit, created, entered into, become a member of, or participated in any pool, trust, agreement, combination, confederation, or understanding with any other corporation, partnership, individual, or any other persons or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or the premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not issued and does not own any trust certificates, and for any corporation, agent, offi-
14 cer or employé, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any article; and that it has not made or entered into any arrangement, contract or agreement with any person, association of persons or corporation designed to lessen, or which tends to lessen, full and free competition in the importation, manu-

facture or sale of any article, product or commodity in this State, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any particular or specified article, product or commodity shall be dealt in, sold or offered for sale in this State, to the exclusion, in whole or in part, of any competing article, product or commodity:

——— ———,
*President, Secretary, or Managing Officer.*

Subscribed and sworn to before me, a — within and for the County of —— this — day of ——, 19—.
[SEAL.] ——— ———.

And thereupon it became the duty of said respondent corporation to make answer to such inquiry by filing or causing to be filed with the said Secretary of State the affidavit prescribed in and required by sections 10322 and 10323 of said Revised Statutes, but respondent corporation, unmindful of its said duty, in disregard to the statutes and laws of this State in respect to Pools, Trusts and Conspiracies and discriminations and in violation of said Sections 10322 and 10323, has failed and refused, and still fails and refuses, to make answer to such inquiry, under oath of its president, secretary, treasurer or managing officer, as required by said
15 sections, and has failed, neglected and refused, and still fails, neglects and refuses to file or cause to be filed with the said Secretary of State such affidavit, described and required by said sections to be made and filed, although more than thirty days have elapsed since the date of the mailing of such inquiry to respondent corporation by said Secretary of State, as aforesaid.

And relator further states that the fact of such failure of respondent corporation and its officers to make such answer and file such affidavit in response to said letter of inquiry, within thirty days from the mailing thereof, has been by said Secretary of State duly certified to relator, the said Circuit Attorney of the City of St. Louis.

Relator states that by reason of the premises respondent has forfeited its charter and subjected itself to the forfeitures and penalties imposed by Sections 10322 and 10327 of said Revised Statutes.

Wherefore, relator prays that respondent's charter and its certificate of corporation be declared and adjudged forfeited, void and of no effect, and that the costs of this proceeding be adjudged against respondent.

SEEBERT G. JONES,
*Circuit Attorney of the City of St. Louis.*
FOREST G. FERRIS,
*Assistant Circuit Attorney.*

Thereupon a writ of summons to defendant was issued September 15, 1910, to the Sheriff of said city, returnable to the next (October Term, 1910, of said court), which writ was served on defendant on the 16th day of September, 1910.

Thereafter, at said October Term, 1910, defendant filed the following

*Demurrer.*

(Omitting Caption.)

Defendant by its attorneys appearing specially and only for this purpose and no other demurs to the petition herein for the following reasons:

16 1. This Court has no jurisdiction over the person of this defendant;

2. Plaintiff has no legal capacity to sue in manner and form as in said petition attempted;

3. There is a defect of parties plaintiff;

4. The petition does not state facts sufficient to constitute a cause of action;

5. This defendant cites the 14th Amendment of the Constitution of the United States as a bar to the allegations of said petition;

6. This defendant cites Section 23 of the second Article of the Constitution of the State of Missouri as a bar to the allegations of the petition.

BARCLAY, FAUNTLEROY & CULLEN,
*Attorneys for said Defendant, Appearing Specially and Solely as Aforesaid.*

*Demurrer Overruled.*

And thereafter said demurrer was duly submitted to the Court and was by the Court overruled, December 27, 1910.

Thereafter, on January 16, 1911, by leave, defendant filed the following

*Answer.*

(Omitting Caption.)

Defendant by its attorneys appearing specially and only for this purpose and no other, for answer to the petition herein states:

1. This Court has no jurisdiction over the person of this defendant;

2. Plaintiff has no legal capacity to sue in manner and form as in said petition attempted;

3. There is a defect of parties plaintiff;

4. This defendant cites the 14th Amendment of the Constitution of the United States as a bar to the allegations of said petition;

5. This defendant cites Section 23 of the second Article of the Constitution of the State of Missouri as a bar to the allegations of the petition.

17 6. Defendant for further defense admits that, on the first day of June, 1910, and from that day to the present time,

defendant was and still is a corporation duly organized and existing according to law, and that at the said times mentioned defendant was and is doing business and had and has an office in the City of St. Louis, Missouri.

For further answer defendant denies generally each and every allegation of the petition herein, except as above admitted.

Defendant having fully answered, prays to be discharged hence without day, with its costs.

BARCLAY, FAUNTLEROY & CULLEN,
*Attorneys for Defendant, Appearing Specially and Only for the Purpose of This Answer.*

*Cause Submitted.*

Thereafter, at the October Term, 1911, on October 30, 1911, the submitted to the Court on said date, as shown by the following entry of record, to-wit:

(Omitting Caption.)

TUESDAY, *May 2nd*, 1911.

Now at this day this cause coming on for hearing, come the parties hereto by their respective attorneys, and submit this cause to the Court upon the pleadings, the evidence, and the proof adduced; and the Court not being sufficiently advised of and concerning the premises, takes time to consider thereof.

*Judgment for Relator.*

Thereafter, at the October Term, 1911, on October 30, 1911, the Court entered judgment for the relator as shown by the following entry of record, to-wit:

(Omitting Caption.)

MONDAY, *October 30th*, 1911.

This cause having heretofore, and on the 2nd day of May,
18 1911, been tried, and submitted to the Court upon the pleadings and the evidence and proof adduced and taken under advisement; and the Court now being sufficiently advised of and concerning the premises, doth find in favor of the plaintiff-relator on the issues joined and doth find that the allegations of the petition herein are true and that relator is entitled to judgment as prayed for in said petition: wherefore, it is ordered and adjudged by the Court that the corporate charter of the respondent, the Mallinckrodt Chemical Works, and its certificate of incorporations, and its right and franchise to do business in this State, be and the same are hereby declared forfeited, void and of no effect; that the respondent pay the costs of this proceeding and that execution issue

therefor. It is further ordered by the Court that a copy of this judgment be certified to the Secretary of State of the State of Missouri. Instructions filed.

*Motion for New Trial Filed.*

And thereafter (at the same October Term, 1911), and within four days, on October 31, 1911, defendant filed its motion for new trial, as shown by the following entry of record, to-wit:

(Omitting Caption.)

TUESDAY, *October* 31*st*, 1911.

Motion for a new trial filed.

*Motion in Arrest Filed.*

And thereafter, at the same October Term, 1911, defendant filed its motion in arrest of judgment as appears from the following entry of record, to-wit:

(Omitting Caption.)

WEDNESDAY, *November* 1, 1911.

Motion in arrest of judgment filed.

19 *Both Motions Overruled.*

And thereafter, at the same October Term, 1911, said motions for new trial and in arrest were submitted to the Court and were by the Court overruled, as appears from the following entry of record at said term, on November 13, 1911, to-wit:

(Omitting Caption.)

MONDAY, *November* 13*th*, 1911.

The Court having heard and duly considered the respondent's motion for a new trial, heretofore filed and submitted herein, doth order that said motion be and the same is hereby overruled; and thereafter, the Court having also heard and duly considered the motion of said respondent in arrest of judgment, heretofore filed and submitted herein, doth order that said motion be and the same is hereby overruled.

*Affidavit for Appeal Filed.*

And thereafter, at the same October Term, 1911, on November 29, 1911, defendant duly filed its affidavit for appeal in words and figures as follows, to-wit:

STATE OF MISSOURI,
*City of St. Louis, ss:*

(Omitting Caption.)

Oscar L. Biebinger of lawful age, being first duly sworn, on his oath says that he is the agent of the above-named defendant, Mallinckrodt Chemical Works, in the above-entitled cause of State ex rel. Jones, Circuit Attorney, v. Mallinckrodt Chemical Works, room 8, No. 67352, and makes this affidavit as agent of, and for and in behalf of said Mallinckrodt Chemical Works, and makes oath and says, that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes
20 that the appellant, said defendant, is aggrieved by the judgment or decision of the Court.

O. L. BIEBINGER.

Subscribed and sworn to before me this 28th day of November, A. D. 1911.

My term expires Feb. 7, 1915.

[SEAL.] HELENA PETTINGILL,
*Notary Public within and for the City of St. Louis, Missouri.*

*Appeal Allowed.*

In consideration whereof the Court, by an order duly entered of record at said October Term, 1911, on November 29, 1911, duly allowed defendant an appeal to the Supreme Court of Missouri and granted defendant ten days' time from the end of said October Term, 1911, to file its appeal bond in the sum of $500, and granted defendant sixty days from said date in which to file its bill of exceptions, all of which appears from the following entries of record at said term on said date, to-wit:

(Omitting Caption.)

WEDNESDAY, *November 29th*, 1911.

Now at this day comes the respondent by attorney and upon its motion, and for good cause shown, it is ordered by the Court that said respondent have 60 days' additional time within which to file its bill of exceptions herein and 10 days after the expiration of the present term of this court to file an appeal bond in the sum of five hundred and no/100 (500) dollars, with security to be approved by the Court or the Judge or the clerk thereof in vacation; thereupon said respondent deposits the docket fee for appeal required by law and files an application, verified by affidavit, for an appeal, and the Court having seen and examined said application, doth grant the same and doth order that an appeal be and is
21 hereby allowed said respondent to the Supreme Court of the State of Missouri from the judgment and decision of the Court heretofore rendered herein.

*October Term Closed* (1911).

On the 1st day of December, 1911, the said October Term (1911) of said Circuit Court closed and came to an end, as shown by the record proper thereof on said last date.

*Appeal Bond Approved.*

And thereafter and within the time as so allowed, on December 9, 1911, defendant duly tendered its appeal bond, which bond was approved and filed as appears from the following record of entry, to-wit:

(Omitting Caption.)

SATURDAY, *December 9th*, 1911.

Defendant's appeal bond in the sum of five hundred and no/100 (500) dollars, with Edward Mallinckrodt, Edward Mallinckrodt, Jr., and Oscar L. Biebinger as surety, approved by the Court and filed.

*Bill of Exceptions Filed.*

And thereafter, and within the time as allowed by said order of November 29, 1911, on December 28, 1911, defendant duly tendered its bill of exceptions which was duly allowed, signed, sealed filed and made part of the record, as appears from the following entry of record, to-wit:

(Omitting Caption.)

THURSDAY, *December 28th*, 1911.

Comes now the respondent by attorney and presents to
22 the Court its bill of exceptions, which is allowed, signed, sealed and filed and made a part of the record herein.

Said bill of exceptions, omitting the caption, is in words and figures as follows, to-wit:

*Bill of Exceptions.*

Be it remembered, That on May 2nd, 1911, the above entitled cause came on for trial before the Honorable James E. Withrow, Judge, in Division No. 8 of said court, the plaintiff appearing by Forrest G. Ferris, Esq., and the defendant by Shepard Barclay, and the following proceedings were had:

The plaintiff, to sustain the issues on his part, offers and introduces evidence as follows:

Plaintiff's counsel offers and reads in evidence the deposition of Fred G. Park, in words and figures as follows, to-wit:

Defendant's counsel objects to the introduction of any evidence in the case, because the petition does not state a cause of action on the ground that the requirement is unconstitutional and for other reasons; objection overruled; defendant at the time duly excepts.

FRED G. PARK, of lawful age, being produced, sworn and examined on the part of the plaintiff, deposeth and saith:

Direct examination by FORREST G. FERRIS, attorney for plaintiff:

Q. Mr. Park, you may give your name, please.
A. Fred G. Park.
Q. Where do you reside?
A. In Jefferson City, Missouri.
23 Q. What official position, if any, do you hold?
A. Chief clerk in the office of the Secretary of State of the State of Missouri.
Q. How long have you held that position?
A. Since the beginning of this administration.
Q. When was that?
A. January 11, 1909.
Q. I will ask you if you have, in the office of the Secretary of State, records pertaining to the making of reports and affidavits, by corporations, as required by Article 3, Chapter 98, Revised Statutes of Missouri, 1909.

Mr. GILBERT: I object to that as immaterial, irrelevant and incompetent, and as calling for a conclusion of the witness.

A. We have.
Q. In what way are the records of reports and affidavits of corporations kept in the office of the Secretary of State, if you have kept such records?

Mr. GILBERT: Objected to as incompetent, irrelevant and immaterial, and not pertaining to any issue in this case.

A. They are kept in the form of index and book form.

Mr. GILBERT: Objected to further that the witness is not qualified.

Q. You may state, in your own way, the course of business of the Secretary of State in the matter of mailing out letters of inquiry to corporations in respect to corporation reports and affidavits and receiving and recording responses to same.

Mr. GILBERT: Objected to as incompetent, irrelevant and immaterial, not responsive to the issues in this case and in no way bearing on the same.

24 A. Blanks are sent out to individual corporations at stated periods during each year, as required by law. Blanks are mailed from this office on June 15 of each year and the corporations

are required to answer on or between July 1 and September 1. After September 1 the corporation becomes delinquent.

Mr. GILBERT: It is moved that the answer be stricken out as giving the conclusion of the witness and his opinion, and, further, as being incompetent, irrelevant and immaterial and not pertaining to any issue in this case.

Q. Who in the office of the Secretary of State, during the year 1910, has had personal charge and direction of the matter of mailing out blanks to corporations for their reports and affidavits?

A. Mr. J. R. Holman, corporation report clerk.

Q. Mr. Holman holds the office, or position, under the Secretary of State, of corporation report clerk?

A. Corporation report clerk? Yes, sir.

Q. I will get you to state what are his duties in that respect.

A. He attends to the mailing of these blanks and the filing of answers received. He has charge of the indexes. In the matter of all corporations he has charge of all matters pertaining to corporation reports.

Q. And under whose supervision and direction does he do this work?

A. Under the supervision of the chief clerk.

Q. Yourself?

A. Yes, sir.

(No cross-examination.)

Plaintiff's counsel offer and read in evidence the leposition of J. R. Holman, in words and figures as follows:

25 J. R. HOLMAN, of lawful age, being produced, sworn and examined on the part of plaintiff, deposeth and saith:

Direct examination, by FORREST G. FERRIS, attorney for plaintiff:

Q. Mr. Holman, you may state your name.

A. J. R. Holman.

Q. Where do you reside?

A. In Jefferson City.

Q. In Cole County, Missouri?

A. Yes, sir.

Q. What position do you hold?

A. I am clerk in the office of the Secretary of State of the State of Missouri and have charge of the corporation report desk.

Q. How long have you been such clerk in charge of that department?

A. Since January 11th, 1909.

Q. Were you acting as such clerk in the office of the Secretary of State in the months of June, July, August and September, 1910?

A. I was.

Q. I will ask you to state under whose direction you performed your duties?

A. Under the direction of Mr. Roach, Secretary of State, and the chief clerk, Mr. Park.

Q. Please state of what your duties consisted as such clerk.

A. In receiving and filing annual reports of corporations and sending out blanks to the corporations, preparatory to making these reports.

Q. I will ask you to state whether you have in the records of the office of the Secretary of State a corporation known as the Mallinckrodt Chemical Works, the defendant in this case?

A. Yes, sir.

Q. I will ask you to state what you did, in the year 1910, in respect to the mailing of letter and blank and filing the affidavit and report of the Mallinckrodt Chemical Works, the defendant in this case.

25 Mr. GILBERT: Objected to as leading and sugge-tive and calling for a conclusion of the witness.

Q. Go ahead and state, in your own way, your duties in regard to this corporation.

Mr. GILBERT: Objected to, further, as calling for conclusion of the witness as to what his duties are.

Q. Go ahead and answer this question.

A. Well, on or before June 15 I mailed to the Mallinckrodt Chemical Works usual blanks for annual report of corporations and anti-trust affidavit, and I registered these blanks through the Post Office Department and received the usual receipt for the same, and, in the usual course of mail, I received the receipt card.

Mr. GILBERT: Objected to as incompetent, irrelevant and immaterial, as giving conclusion of the witness and not facts, and in nowise pertaining to or bearing on the issues in this case. Futher objected to as not the best evidence.

Q. I will ask you whether you mailed any letter of inquiry as to whether said corporation had all or any part of its business or interest in, or within, any trust, combination or association of persons or stockholders, as named in the statutes.

Mr. GILBERT: Objected to as leading, as calling for conclusion and opinion of the witness.

Q. What is your answer?

A. I did.

Mr. GILBERT: Moved that the answer be stricken out as not the best evidence.

Q. Have you a copy of that letter of inquiry?

A. I can get one here in the office.

Q. Will you produce a copy of such letter of inquiry as you mailed to defendant and have the stenographer mark it "Exhibit A" and attach it to your deposition as a part of your testimony?

A. Yes, sir.

27 Mr. GILBERT: Objected to as not the best evidence.

Q. Have you the original letter in this office that you mailed to the defendant?

A. No, sir.

Q. You have testified that you mailed to the defendant the blank form for affidavit and report, and you have testified that you mailed to defendant a letter of inquiry. Please state how those blanks and the letter of inquiry were mailed with reference to whether, or not, they were sent in the same or different envelopes.

Mr. GILBERT: Objected to as testimony by counsel and as a resumé of the witness' testimony. Further objected to as leading, as irrelevant, incompetent and immaterial.

A. They were mailed in the same envelope, addressed to the company.

Q. How was the letter of inquiry mailed to the defendant?

A. Mailed in an envelope, addressed to the company, with blank for the report and return envelope addressed to the Secretary of State.

Q. How was the letter forwarded?

A. Forwarded through the United States mails, through registry department.

Mr. GILBERT: Objected to as a conclusion of the witness and not facts.

Q. Please examine this writing—that bottom one—and state what it is.

(Mr. Ferris then handed Mr. Holman the card.)

A. This is a receipt from the registry department of the Post Office, Jefferson City, for a piece of mail addressed to the Mallinckrodt Chemical Works, St. Louis, on the 13th of June, 1910.

Mr. FERRIS: I offer in evidence letter receipt No. 4567, headed Post Office, Jefferson City, Missouri, and reading as follows:

28 "Letter No. 4567. P. O., Jefferson City, Mo. Received for registration, 6/13, 1910, from Cornelius Roach, addressed to Malline-rodt Chemical Works, St. Louis, Mo.

POSTMASTER,
Per KOLKMEYER."

And I will ask the notary to mark that "Exhibit B" and attach it to the deposition of the witness.

(Said letter receipt No. 4567 is hereto attached as part of the witness' deposition. L. H. M.)

Q. I will get you to state, Mr. Holman, what was contained in the letter for which this receipt was received from the post office.

A. What was contained in the letter?

Q. Yes.

A. Well, it was a request for the report.

Q. That is the letter you have already referred to as "Exhibit A"?

A. Yes, sir.

Q. What else?

A. The blanks for their report and affidavit and a return envelope addressed to "Cornelius Roach, Secretary of State".

Mr. GILBERT: Moved to strike out the two last preceding answers because not the best evidence, incompetent, irrelevant and immaterial; and foreign to any issue in this case, and calling for the witness' conclusion as to legal documents.

Q. I will ask you if you have in the office of the Secretary of State the original blank which you referred to as having been enclosed in said registered letter?

A. No, sir.

Q. I will ask you if you have a true copy of said blank form of affidavit?

A. Yes, sir.

Q. I will ask you to please produce said copy of said blank form of affidavit and will ask the notary to mark it "Exhibit C" and attach it to your deposition.

29 (Copy of said blank form of affidavit, marked "Exhibit C," is hereto attached as part of Mr. Holman's deposition. L. H. M.)

Q. I show you now, "Exhibit C" and will ask you if that is a true copy of blank form of affidavit which you enclosed in said registered letter?

A. It is.

Mr. GILBERT: Objected to as incompetent, irrelevant and immaterial, not the best evidence and mere opinion of the witness, no foundation having previously been laid.

Q. I will ask you whether or not the Secretary of State received any response, of any kind, from said registered letter from the defendant?

Mr. GILBERT: Objected to as leading and calling for the conclusion of the witness.

A. We did.

Q. I will ask you to examine this card. Now, what is that card that I have just shown you?

A. It is registry return receipt from the Post Office Department.

Mr. GILBERT: Objected to and moved to strike out the answer of the witness on the ground that the card will show for itself, and that the card is the best evidence as to what it is. The witness cannot explain what the card is.

Q. From whom did this office receive said card?

Mr. GILBERT: Objected to as incompetent, irrelevant and immaterial.

Q. I mean at whose hands did you receive it?

Mr. GILBERT: Same objection.

A. From the Post Office Department.

Mr. GILBERT: I move to strike out the answer as there is no showing that the witness knows from whom the card was received.

Q. I will ask you if you know when this card was received
30 in the office of the Secretary of State?

A. I could not tell.

Q. Well, when was it received with reference to the date on the card?

Mr. GILBERT: Objected to as witness is not qualified to answer as he has already testified that he did not know.

A. No, I could not state from that just what day it was received in this office.

Mr. FERRIS: I will ask the notary to mark said card "Exhibit D" and attach it to the deposition of the witness; and we offer the same in evidence, said card reading as follows:

"Post Office Department,
Official Business.
Original Reg. No. 4567.

Return to Sec'y of State, Jefferson City, Mo. It bears the number, on the face, '28865' and on the reverse side thereof appears 'Registry Return Receipt.' Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery, June 14, 1910.

(To be filled in by person signing receipt.)

MALLINCKRODT CHEMICAL WORKS.
(Signature or Name of Addressee.)
EDW. MALLINCKRODT, *Pr's't.*
(Signature of Addressee's Agent.)"

Mr. GILBERT: Objected to as incompetent, irrelevant, immaterial, not proper foundation laid for its introduction, and not pertinent to any issue in this case.

Q. I will ask you whether you received any other response to said registered letter than the said receipt card?

Mr. GILBERT: Objected to as leading, incompetent, irrele-
31. vant and immaterial, as assuming that the receipt card is a response.

A. Yes, sir, I did.

Q. What response, aside from the registry receipt, did you receive to said registered letter?

Mr. GILBERT: Same objection as to previous question.

A. The blank was returned by the company—that blank, "Exhibit C," was returned by the company with the report form, on opposite side of "Exhibit C," properly made out.

Mr. GILBERT: Moved to strike answer out as not the best evidence, as being a conclusion of the witness.

Q. What was done, if anything, in the matter of filling out the form of affidavit, a copy of which is "Exhibit C," which you received from the company, that you have testified to?

Mr. GILBERT: Objected to as stating a conclusion of counsel, as incompetent, irrelevant and immaterial, and not the best evidence.

A. There was nothing, none of the blanks were filled out.
Q. None of the blanks of affidavit, "Exhibit C"?
A. Yes, sir.
Q. On what date was this blank form, "Exhibit C," received back in the office of the Secretary of State?

Mr. GILBERT: Objected to as involving a conclusion; further objected to as witness is referring to a book; objected to, further, as incompetent, irrelevant and immaterial.

Q. What is the answer?
A. July 22.
Q. What year?
A. 1910.

Mr. GILBERT: It is moved to strike the answer out as not
32 the witness' testimony, but a memorandum from a book he now holds in his hands.

Q. I will now ask you what book you hold in your hands?
A. It is an Index to Domestic Mfg. and Business Corporations for the years 1909-1912, L-Z, State of Missouri.
Q. State what sort of a book that is and where it belongs?
A. It belongs in the office of the Secretary of State and to the desk with which I am identified, and contains a list of the names of corporations of Missouri—domestic corporations of Missouri.
Q. You have given the date when this blank form was received back. How do you know that date?
A. From entry in the book just described.

Mr. GILBERT: Moved that all the testimony as to date be stricken out as not the evidence of the witness, and as being wholly irrelevant, immaterial and incompetent.

Q. Have you any independent recollection of this blank being back in the office of the Secretary of State, of having seen it, or known of its receipt?
A. Yes, sir.
Q. What recollection have you of that?
A. The blank was returned with the annual report blank filled in and the affidavit blank returned blank, and, as this is an unusual occurrence, of course, I noted that; and for the further reason that my deposition was taken in a case against the same company in 1909.

Mr. GILBERT: I object to that answer as not responsive to the question, as argumentative, irrelevant, immaterial, incompetent; as a conclusion of the witness.

Q. When did you take notice of this affidavit being returned blank with reference to the first day of September, 1910?

33 A. Well, my attention was called to it on the day that the report was filed in this book to which I have referred, the 22nd of July.

Mr. GILBERT: Objected to as immaterial, irrelevant and incompetent.

Q. And how do you learn the date when the report that you have referred to was filed?

A. From entry in this index book, which I have described, opposite the name of the company.

Q. Who kept that book at said time?

A. I did.

Q. How was it kept in reference to the corporations filing reports and affidavits in this office?

Mr. GILBERT: Objected to as irrelevant, immaterial and incompetent, and not bearing on any issue in this case.

A. Opposite the name of each corporation are two columns. One column is for the report and the other for the affidavit, and when report is received it is noted in book by stamping the date of its receipt in this column, and the same entry would be made in the case of an affidavit return.

Mr. GILBERT: I object to answer as not responsive to the question.

Q. And that entry was made by whom?

A. That was made by me.

Q. Now, what was the course of business in this office in respect to noting the time of the receipt of such report and affidavits?

A. We stamped the date in this index.

Q. When was that done in reference to the time when the document would be received?

Mr. GILBERT: All testimony as to the report referred to by the witness is objected to as incompetent, irrelevant and immaterial, and not bearing on any issue in the present case.

34 A. Well, that date would show the date it was received and filed.

Q. Just when would the entry be made in the book with reference to the day when it was received and filed?

Mr. GILBERT: Objected to as being suggestive.

A. Well, I could not say that it would be the same day as received in the office. In the month of July business is so great that each day's receipts cannot be filed on that day.

Q. Well, how were the reports handled in the month of July with reference to noting on the reports or on the records, or any other way, the date of their receipt?

A. Well, the reports were stamped "Received and filed" and the date given.

Mr. GILBERT: Objected to as irrelevant, immaterial and incompetent.

Q. When with reference to the time they were received?
A. I could not say, positively, as to that, except that that would be the only evidence of official receipt. It is possible that they might be in the office a day or two prior to the day on which they were stamped received.
Q. As I understand you, the document itself was stamped on the day it arrived in this office, or within a day or two thereafter.

Mr. GILBERT: Counsel's understanding is objected to as being entirely incorrect, incompetent, irrelevant and immaterial.

A. Your understanding is correct.

Mr. GILBERT: It is moved to strike the answer out.

Q. The date of receipt in the book would be made the same as on the report itself and would be made at the same time?
A. Yes, sir.

35 Mr. GILBERT: Objected to as not responsive to the question, as irrelevant, immaterial and incompetent, and not the best evidence; furthermore, not pertaining to any issues in this case.

Q. What became of said original blank affidavit which you mailed to defendant and which was returned to the office of the Secretary of State, unfilled?
A. It was filed in this office on July 22nd and credit for the report was given on the record, and the blank was returned to the company that the affidavit might be filled out.

Mr. GILBERT: Moved to strike out the answer as irrelevant, immaterial and incompetent, not responsive to the question and giving the conclusion of the witness.

Q. About when was it returned?
A. That same day—July 22nd.
Q. How was it returned?
A. Well, it was returned in an envelope with a return envelope addressed to the Secretary of State.
Q. And to whom was it addressed?
A. Mallinckrodt Chemical Works.
Q. Where?
A. St. Louis, Missouri.
Q. And how was it sent?
A. Through due course of mail—through the mail.
Q. What, if any, response was received in this office to said return of the blank?

Mr. GILBERT: Objected to as calling for the conclusion of the witness, as irrelevant, immaterial and incompetent, and no foundation laid.

A. There was no response. They kept the report.
Q. I will ask you to state whether or not there is on file in the office of Secretary of State any affidavit in the form required by Sec. 10322, or otherwise, made by defendant Mallinckrodt
36 Chemical Works, or by any of its officers, or by any person in its behalf, for the year 1910?

Mr. GILBERT: Objected to as leading, incompetent, irrelevant and immaterial, and as calling for a conclusion of the witness.

A. No, sir.

Q. I will ask you to state what, if any, affidavit has been offered for filing in the office of the Secretary of State by said corporation, or by any person in its behalf, for the year 1910.

Mr. GILBERT: Same objection as to the preceding question.

A. Only the blank form was returned.

Mr. GILBERT: Moved to strike out answer as incompetent, irrelevant and immaterial

Plaintiff's counsel offers in evidence a letter in words and figures as follows, to-wit:

EXHIBIT A. L. H. M.

State of Missouri,
Department of State,
City of Jefferson.

[GREAT SEAL.].

Cornelius Roach, Secretary of State.

JUNE 15, 1910.

DEAR SIR: In obedience to the requirements of section 8978 of act approved March 20, 1907 (Sec. 10322, R. S. 1909), I hereby request information as to whether your corporation has any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named and described in the provisions of said act. An answer is required, under oath of the president, secretary or managing officer of your company,
37 and to that end a form of affidavit, as prescribed by law, accompanies this letter.

Your failure to make the affidavit in the form prescribed by law, within thirty days from this date, will subject your corporation to a fine and forfeiture of charter and its privilege to transact business in this State.

On the reverse side of the affidavit you will find a blank form for the annual report of your corporation as required by Sec. 1013, Revised Statutes of Missouri, 1899 (Sec. 3026, R. S. 1909).

Failure to make this report will also subject your corporation to heavy penalties.

If your corporation has dissolved or ceased to exercise its corporate existence, you should immediately report the fact to this office in order to avoid prosecution. Blanks for this purpose will be furnished you upon application.

This matter should receive your immediate attention.

CORNELIUS ROACH,
*Secretary of State.*

P. S.—Please use enclosed blank for report of corporation addressed, as it bears certificate number of that corporation.

Plaintiff's counsel offers in evidence a copy of affidavit in words and figures as follows, to-wit:

[The fac simile of original exhibit here offered and called for in said bill of exceptions is inserted between pp. 37 and 38 hereof.]

38 Mr. BARCLAY: I object to this because the two affidavits are one piece of paper, one being on the back of the paper. It appears that the defendant made its report as a domestic corporation upon a blank which was furnished by the Secretary of State, making the report required by law, which was returned, but on the back of it was an affidavit which was left blank when it was returned, on the other part of the paper. It devolved on the Secretary of State to furnish two blanks because the two blanks are to be used at different times. The law provides a different time for one to be returned from the time of the return of the other. In one case the corporation has 60 days from the 1st of July, as a domestic corporation, and it has only 30 days after the mailing of the requirement to comply with the anti-trust matter. It is obvious to avail itself of the time that it should have proper time to make the return. We object to the blank furnished for the purpose of making the anti-trust affidavit on the same blank upon which is made this return. One of the fundamental objections we make is that we should have two blanks furnished and the Secretary of State is not authorized to hold us in default when he has furnished one paper with two blanks when we have answered one blank in every respect and therefore this is immaterial, he having furnished us a blank on the back of another blank.

Objection overruled: defendant at the time duly excepts.

Plaintiff's counsel offers in evidence a registry return receipt which defendant's counsel admits is signed by Mr. Mallinckrodt, in words and figures as follows:

[Said exhibit here called for and a part of the bill of
39 exceptions has been printed heretofore at p. 20.]

Plaintiff's counsel offers in evidence a certificate of the Secretary of State, and states that it was mailed to and received by the Circuit Attorney of the City of St. Louis, in the month of September before the date of the filing of this action.

Defendant's counsel states that he does not admit that it was received, but takes the statement of counsel.

The paper referred to is in words and figures as follows, to-wit:

DEPARTMENT OF STATE.

To Mr. Seebert G. Jones, Circuit Attorney of St. Louis, Missouri:

STATE OF MISSOURI,
*City of Jefferson, ss:*

I, Cornelius Roach, Secretary of State of the State of Missouri, under authority of Sec. 3093, R. S. 1899, do hereby certify that the following statement, as to the standing of the within-named corporations, is a true and correct copy of the records of this office, and do further certify, as shown by the records of this office, that the